

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Rafael Arroyo

Plaintiff,

v.

San Francisco CDC LLC, a
Delaware Limited Liability
Company;

Defendant,

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Rafael Arroyo complains of San Francisco CDC LLC, a Delaware
Limited Liability Company (“Defendant”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is
substantially limited in his ability to walk. He is a paraplegic. He uses a
wheelchair for mobility.

2. Defendant San Francisco CDC LLC, a Delaware Limited Liability

1 Company owns and operates the InterContinental San Francisco located at
2 888 Howard St., San Francisco, California currently and at all times relevant
3 to this complaint.

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein, is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13 14 **JURISDICTION:**

15 4. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25 26 **PRELIMINARY STATEMENT**

27 7. This is a lawsuit challenging the reservation policies and practices of a
28 place of lodging. Plaintiff does not know if any physical or architectural

1 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
2 violated any construction-related accessibility standard. Instead, this is about
3 the lack of information provided on the hotel's reservation website that would
4 permit plaintiff to determine if there are rooms that would work for him.

5 8. After decades of research and findings, Congress found that there was
6 a "serious and pervasive social problem" in America: the "discriminatory
7 effects" of communication barriers to persons with disability. The data was
8 clear and embarrassing. Persons with disabilities were unable to "fully
9 participate in all aspects of society," occupying "an inferior status in our
10 society," often for no other reason than businesses, including hotels and
11 motels, failed to provide information to disabled travelers. Thus, Congress
12 decided "to invoke the sweep of congressional authority" and issue a "national
13 mandate for the elimination of discrimination against individuals with
14 disabilities," and to finally ensure that persons with disabilities have "equality
15 of opportunity, full participation, independent living" and self-sufficiency.

16 9. As part of that effort, Congress passed detailed and comprehensive
17 regulations about the design of hotels and motels. But, as importantly,
18 Congress recognized that the physical accessibility of a hotel or motel means
19 little if the 61 million adults living in America with disabilities are unable to
20 determine which hotels/motels are accessible and to reserve them. Thus,
21 there is a legal mandate to provide a certain level of information to disabled
22 travelers.

23 10. But despite the rules and regulations regarding reservation procedures,
24 a 2019 industry article noted that: "the hospitality sector has largely
25 overlooked the importance of promoting accessible features to travelers."

26 11. These issues are of paramount important. Persons with severe
27 disabilities have modified their own residences to accommodate their unique
28 needs and to ameliorate their physical limitations. But persons with disabilities

1 are never more vulnerable than when leaving their own residences and having
2 to travel and stay at unknown places of lodging. They must be able to ascertain
3 whether those places work for them.

4
5 **FACTUAL ALLEGATIONS:**

6 12. Plaintiff planned on making a trip in June of 2021 to the San Francisco,
7 California, area.

8 13. He chose the InterContinental San Francisco located at 888 Howard St.,
9 San Francisco, California because this hotel was at a desirable price and
10 location.

11 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
12 his ability to, stand, ambulate, reach objects, transfer from his chair to other
13 equipment, and maneuver around fixed objects.

14 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
15 information about accessible features in hotel rooms so that he can confidently
16 book those rooms and travel independently and safely.

17 16. On January 8, 2021 while sitting bodily in California, Plaintiff went to
18 the InterContinental San Francisco reservation website at
19 <https://www.intercontinentalsanfrancisco.com/> seeking to book an accessible
20 room at the location.

21 17. This website reservation system is owned and operated by the
22 Defendants and permits guests to book rooms at InterContinental San
23 Francisco.

24 18. Plaintiff found that there was insufficient information about the
25 accessible features in the "accessible rooms" at the Hotel to permit him to
26 assess independently whether a given hotel room would work for him.

27 19. For example, Plaintiff requires a raised toilet so he can safely transfer
28 from his wheelchair to the toilet. Without this feature, he risks falling. The

1 website does not mention if the toilet has this feature.

2 20. As another example, Plaintiff has had tremendous difficulty with using
3 lavatory sinks in the past because sinks were cabinet style sinks or had low
4 hanging aprons that did not provide knee clearance for a wheelchair user to
5 pull up and under or, alternatively, where the plumbing underneath the sink
6 was not wrapped with insulation to protect against burning contact to his
7 knees. Here, the Hotel reservation website provides no information about the
8 accessibility of the sinks in the accessible guestroom.

9 21. As another example, Plaintiff needs to know that the bed has a
10 compliant clear space next to it so he can safely transfer from his wheelchair to
11 the bed. Here the Hotel website provides no information about the
12 accessibility of the clear space next to the bed.

13 22. Plaintiff does not need an exhaustive list of accessibility features.
14 Plaintiff does not need an accessibility survey to determine if a room works for
15 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
16 handful of features to be identified and described with a modest level of detail:

- 17 • For the doors, Plaintiff simply needs to know if he can get into the hotel
18 room and into the bathroom. This is a problem that has created
19 tremendous problems for the Plaintiff in the past. A simple statement
20 that the hotel room entrance and interior doors provide at least 32
21 inches of clearance is enough to provide Plaintiff this critical piece of
22 information about whether he can fit his wheelchair into the hotel
23 rooms.
- 24 • For the beds themselves, the only thing Plaintiff needs to know (and the
25 only thing regulated by the ADA Standards) is whether he can actually
26 get to (and into) the bed, i.e., that there is at least 30 inches width on the
27 side of the bed so his wheelchair can get up next to the bed for transfer.
28 This is critical information because Plaintiff cannot walk and needs to

1 pull his wheelchair alongside the bed.

- 2 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
3 know that it has sufficient knee and toe clearance so that he can use it.
4 A simple statement like “the desk provides knee and toe clearance that
5 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
6 deep” is more than sufficient. Because Plaintiff is confined to a
7 wheelchair, he needs to know this information to determine if the desk
8 is accessible to and useable by him.
- 9 • For the restroom toilet, Plaintiff only needs to know two things that
10 determine if he can transfer to and use the toilet; (1) that the toilet seat
11 height is between 17-19 inches (as required by the ADA Standards) and
12 (2) that it has the two required grab bars to facilitate transfer.
- 13 • For the restroom sink, the Plaintiff two things that will determine
14 whether he can use the sink from his wheelchair: (1) can he safely get his
15 knees under the toilet? To wit: does the sink provide the knee clearance
16 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
17 under the sink wrapped with insulation to protect against burning
18 contact? The second thing is whether the lavatory mirror is mounted at
19 a lowered height so that wheelchair users can see it. A simple statement
20 like: “the lavatory sink provides knee clearance of at least 30 inches
21 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
22 is wrapped, and the lowest reflective edge of the mirror is no more than
23 40 inches high” would suffice.
- 24 • Finally, for the shower, Plaintiff needs to know only a handful of things:
25 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
26 in), (2) whether it has an in-shower seat; (3) that there are grab bars
27 mounted on the walls; (4) that there is a detachable hand-held shower
28 wand for washing himself and (5) that the wall mounted accessories and

1 equipment are all within 48 inches height.

2 23. This small list of items are the bare necessities that Plaintiff must know
3 to make an independent assessment of whether the “accessible” hotel room
4 works for him. These things comprise the basics of what information is
5 reasonably necessary for Plaintiff (or any wheelchair user) to assess
6 independently whether a given hotel or guest room meets his or her
7 accessibility needs.

8 24. Other accessibility requirements such as slopes of surfaces, whether the
9 hand-held shower wand has a non-positive shut off valve, the temperature
10 regulator, the tensile strength and rotational design of grab bars, and so many
11 more minute and technical requirements under the ADA are beyond what is a
12 reasonable level of detail and Plaintiff does not expect or demand that such
13 information is provided.

14 25. But because the Defendants have failed to identify and describe the core
15 accessibility features in enough detail to reasonably permit individuals with
16 disabilities to assess independently whether a given hotel or guest room meets
17 his accessibility needs, the Defendants fail to comply with its ADA obligations
18 and the result is that the Plaintiff is unable to engage in an online booking of
19 the hotel room with any confidence or knowledge about whether the room will
20 actually work for him due to his disability.

21 26. This lack of information created difficulty for the Plaintiff and the idea
22 of trying to book this room -- essentially ignorant about its accessibility --
23 caused difficulty and discomfort for the Plaintiff and deterred him from
24 booking a room at the Hotel

25 27. Plaintiff travels frequently and extensively, not only for non-litigation
26 reasons but also because he is an ADA tester and actively engaged in finding
27 law breaking businesses and hauling them before the courts to be penalized
28 and forced to comply with the law.

1 28. As he has in the past, Plaintiff will continue to travel to the San Francisco
2 area on a regular and ongoing basis and will patronize this Hotel once it has
3 been represented to him that the Defendant has changed its policies to comply
4 with the law and to determine if the Hotel is physically accessible as well as
5 complying with required reservation procedures. Plaintiff will, therefore, be
6 discriminated against again, i.e., be denied his lawfully entitled access, unless
7 and until the Defendant is forced to comply with the law.

8 29. Plaintiff has reason and motivation to use the Defendant's Hotel
9 reservation system and to stay at the Defendant's Hotel in the future. Among
10 his reasons and motivations are to assess these policies and facilities for
11 compliance with the ADA and to see his lawsuit through to successful
12 conclusion that will redound to the benefit of himself and all other similarly
13 situated. Thus, Plaintiff routinely revisits and uses the facilities and
14 accommodations of places he has sued to confirm compliance and to enjoy
15 standing to effectuate the relief promised by the ADA.

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 31. Under the ADA, it is an act of discrimination to fail to make reasonable
24 modifications in policies, practices, or procedures when such modifications
25 are necessary to afford goods, services, facilities, privileges advantages or
26 accommodations to person with disabilities unless the entity can demonstrate
27 that taking such steps would fundamentally alter the nature of the those goods,
28 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §

1 12182(B)(2)(A)(ii).

2 32. Specifically, with respect to reservations by places of lodging, a
3 defendant must ensure that its reservation system, including reservations
4 made by “any means,” including by third parties, shall:

- 5 a. Ensure that individuals with disabilities can make
6 reservations for accessible guest rooms during the same
7 hours and in the same manner as individuals who do not
8 need accessible rooms;
9 b. Identify and describe accessible features in the hotels and
10 guest rooms offered through its reservations service in
11 enough detail to reasonably permit individuals with
12 disabilities to assess independently whether a given hotel
13 or guest room meets his or her accessibility needs; and
14 c. Reserve, upon request, accessible guest rooms or specific
15 types of guest rooms and ensure that the guest rooms
16 requested are blocked and removed from all reservations
17 systems.

18 *See* 28 C.F.R. § 36.302(e).

19 33. Here, the defendant failed to modify its reservation policies and
20 procedures to ensure that it identified and described accessible features in the
21 hotels and guest rooms in enough detail to reasonably permit individuals with
22 disabilities to assess independently whether a given hotel or guest room meets
23 his or her accessibility needs and failed to ensure that individuals with
24 disabilities can make reservations for accessible guest rooms during the same
25 hours and in the same manner as individuals who do not need accessible
26 rooms.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 34. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code §51(b).

11 35. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 36. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
 15 reservation policies and practices.

16 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty
 17 and discomfort for the plaintiff, the defendants are also each responsible for
 18 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

19
 20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide
 22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the
 24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 25 plaintiff is not invoking section 55 of the California Civil Code and is not
 26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act, which provides for actual
 28 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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4
5 Dated: January 28, 2021

CENTER FOR DISABILITY ACCESS

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9 By: _____
10 Russell Handy, Esq.
11 Attorneys for Plaintiff
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